

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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JOSE HENRY GONZALEZ,
Individually and on behalf of all
others similarly situated,

AFFIDAVIT

Plaintiff,

-against-

Case No. 12-CV-3465 (BMC)

AUTO-CHLOR SYSTEM OF NEW YORK
CITY, INC., et. al.,

Defendants.

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STATE OF NEW YORK)

SS.:

COUNTY OF QUEENS)

ALLEN BEST, being duly sworn, deposes and says:

1. I have worked for AUTO-CHLOR SYSTEM OF NEW YORK CITY, INC. (hereinafter “Auto-Chlor”) for approximately 3 months, or since August, 2012.
2. My title is Sales and Route Supervisor. My duties as a Sales and Route Supervisor is to oversee the sales and duties of the Route Drivers.
3. The person who I reported to at Auto-Chlor when I first began and currently is Sam Villanueva (hereinafter “Sam”).
4. When I began working for Auto-Chlor, I was provided with 11 uniforms, which consist of a button down shirt and slacks that have the Auto-Chlor logo on them. My uniforms are cleaned by a company called Aramark. If my uniform gets ratty or torn, Auto-Chlor replaces my uniform. I have never been charged for my uniform.

5. I currently make \$18.00 per hour, plus commissions, plus time and a half for all hours worked over forty in one week.

6. As far as benefits go, Auto-Chlor is very generous. In addition to my regular rate of pay, I also receive full medical benefits, paid sick time, holidays and vacation time. Not only that, but Auto-Chlor makes a contribution into a retirement account for me, in addition to allowing me participate in profit sharing.

7. When I first started working for Auto-Chlor, my regular shift was from 8:00 A.M. until 4:30 PM, with a half hour break each day, 5 days a week, or Monday through Friday. In addition to my regular shift, I am also required to work “on call”. I am the person who receives a call in the event the person scheduled to work “on call” cannot service the customer. I then have the choice to either dispatch the call to another on call employee or to service the customer myself.

8. When I am “on call”, I am not required to be at work, but am allowed to do whatever I want so long as I am available a phone call away to respond to customer issues. When a customer reports an issue with their machine when I am “on call”, I am notified and leave wherever I am to service the customer. I am compensated for my “on call” time by keeping time log of the time from when I leave my house, or current location, until I return home, or to my current location. I report my time to my supervisor, Sam, so that he can include my time in that week’s payroll.

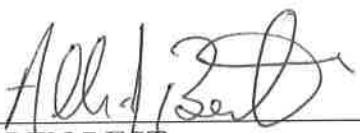
9. For the entire time that I have worked for Auto-Chlor, it has always been company policy that “on call” time is compensated from the time we leave our house until the time we return home, all of the Route Drivers that I supervise are aware of this

policy. They also know that the reporting of our "on call" time is based upon the "honor system" and that our boss relies upon us to accurately report our time. I have always been paid for the time I have reported to my boss and that time has always included my travel time from my home to the customer's location and my travel time from the customer's location back home.

10. I have been told that the plaintiff in this case is claiming that the "on call" time is reported from the time we arrive at the customer's location until the time we leave the customer's location. That simply is not true and has not been the policy of Auto-Chlor at least as long as I have been here.

11. If I ever had a problem with my paycheck, which I have not, I know that it is Auto-Chlor's policy that any discrepancy be reported to my boss, Sam, and I know that it would be taken care of immediately.

12. Are you aware of anyone ever not being compensated for their "on call" time from the time they left home until the time they returned thereto.



ALLEN BEST

Sworn to before me this
24th day of October 2012.


NOTARY PUBLIC

Kristen J. Kircheim
NOTARY PUBLIC, STATE OF NEW YORK
NO. 02K16241500
QUALIFIED IN NASSAU COUNTY
COMMISSION EXPIRES MAY 23, 2015